



**June 29, 2001**

Mr. John R. O'Toole, MPP  
Parliamentary Assistant to the Minister of Finance  
7 Queen's Park Crescent  
Frost Building South, 7th Floor  
Toronto ON M7A 1Y7

Dear Mr. O'Toole:

**Re: Establishing a Single Financial Services Regulator: Consultation Draft**

The Pension Investment Association of Canada is the representative organization for pension funds in Canada in matters relating to investment. Also known widely as PIAC, the Association presently represents 138 Canadian pension funds that manage over \$1/2 trillion in assets for the benefit of more than eight million Canadian beneficiaries.

PIAC's mission statement is "*to promote the financial security of pension fund beneficiaries through sound investment policy and practices*". This mission is the focus of all PIAC activities and is pursued by members in semi-annual conferences, seminars, committee activities and networking. It is also pursued by the organization in its advocacy, its research and its communications with Members.

PIAC's primary focus is pension investment and related issues. As a result, our comments herein address only issues relevant to our focus.

The success or failure of the merger initiative, including key elements such as the proposed rule-making power for the merged regulator, depends greatly upon the regulator's and the government's commitment to meaningful public and stakeholder consultations. PIAC is very pleased that, to date, FSCO staff have been very open and helpful in discussing the issues underlying the Consultation Draft and, in particular, the rule-making powers for the new Ontario Financial Services Commission (the Commission). As a result, we are generally content with the areas for which rule-making is proposed and with the degree of stakeholder consultation that can be expected. Notwithstanding the faith with which this is stated, we would argue that there are additional areas, even those that may involve individual rights and entitlements, where rule-making could be extended to the benefit of plan members and administrators.

The goals of protecting the public interest, protecting consumers of financial services and products, enhancing public confidence and fostering a fair, efficient and effective marketplace are all worthy pursuits of the proposed merged entity. However, they apply with varying degrees of relevancy to pension plans. In a pension plan, it is the member, and not the public, who requires the regulator's protection. In this context, under the current pension regulatory regime, the member is protected primarily by the statutory and common law duties imposed on the plan administrator and participating employers. The goal of the merged regulator in this respect should be to simplify the regulation of pension plans by acknowledging that the fiduciary duty provides protections to members not otherwise available to consumers investing in mutual funds or segregated funds.

With respect to the Consultation Draft, we offer the following specific comments.

Pension Investment Rules: We understand and agree with the position of the Ontario Teachers' Pension Plan Board (OTPPB) that the merged Commission should be granted broad rule-making powers in pension investment matters. Clearly, we prefer a process whereby rapidly changing developments in pension investment may be addressed by knowledgeable Commission staff on a timely basis after extensive consultation with pension experts.

In the same context, we also support the approach that would permit the Commission to make exemption orders on application of interested parties where it is not contrary to the public interest. This flexibility is essential to ensure that an unintended result does not have a permanent and undesirable impact on such parties.

Investigations: Again, we support the position of the OTPPB that Section 11 investigative powers in the Securities Act are not necessary or desirable in pension regulation and that the existing investigative powers under the PBA are completely adequate in the circumstances.

PIAC would be pleased to answer any questions you may have concerning our comments.

Yours truly,

Original signed "K. A. Douglas"

Keith A. Douglas  
General Manager